



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

“A Writer’s Preparation”; “Habits of Reading”; “A Writer’s Habits”; “The Study of our own Language”; “Clearness of Expression and Thought”; “Using Words for Ornament”; and “Permanent Literary Fame.” Upon every one of this attractive list of subjects Mr. Channing has written with equal care, thoughtfulness, and taste. These essays are, therefore, interesting and instructive in a very high degree, and deserve the close attention of every literary person.

We have thus called the attention of the readers of this journal to the matured and well-weighed thoughts of a mind which possessed a singular combination of abilities and resources. We trust other volumes will follow, embracing other portions of his public lectures, his contributions to periodical literature, and a selection of the letters to which Mr. Dana alludes in his introductory Notice. No doubt they would be welcomed by the community as a precious addition to our literature.

- ART. III.—1. *The Sound Dues of Denmark, and their Relations with the Commerce of the World.* By F. HESSENLAND, Stettin, Prussia. Translated in Hunt’s Merchant’s Magazine, October, 1855.
2. *Message from the President of the United States, transmitting Correspondence in Relation to the Imposition of “Sound Dues” upon our Commerce to the Baltic.* May 30, 1854. 33d Congress, 1st Session, Executive Document No. 108.
3. *Annual Message from the President of the United States to the Two Houses of Congress, with Accompanying Documents.* Part I. 34th Congress, 1st Session, Executive Document No. 1.

THE questions relating to the Danish Sound Dues, overshadowed as they have been by other matters of more critical importance, both in our foreign and our domestic affairs, still present many interesting features, and involve considerations

at once delicate and perplexing. The dispute is a curious instance of conflicting rights, where claims, founded upon centuries of prescription and acquiescence, on the one hand, are opposed by the rigid equity of a commercial age, on the other. For as many as six hundred years the right to collect tolls from all vessels passing through the Sound or the Belts has been deemed one of the highest, and has been one of the most valuable, prerogatives of the Danish crown. For a considerable part of this time the sovereignty thus exercised over these straits has been used beneficially for the security of commerce, by the maintenance of lights, the removal of obstacles to navigation, and the suppression of piracy ; and although the Danish jurists do not found the claim to tolls upon these services, but, as we have intimated, upon immemorial prescription, it may still be regarded as an open question, whether the tolls were originally paid in acknowledgment of benefits conferred upon commerce, or were collected, as many other taxes were collected in the feudal age, by the right of the strongest. As early as 1202 Waldemar the Victorious erected a light-house at the extremity of the Sound ; but how early the collection of the Sound Dues began cannot be ascertained, although a charter is still extant regulating the duties paid by the Dutch, dated A. D. 1319, at which time the claim seems to have been converted into a fixed toll. But the demand did not pass altogether unquestioned. The Hanseatic League, upon whose commerce the tolls were a severe burden, frequently contested the right of Denmark to make this exaction, secured for themselves considerable immunities, and indeed, in the middle of the sixteenth century, seem to have been entirely exempt from all payments at the Sound.

When Charles V., acting in concert with Henry VIII. of England, formed his great combination against France, a combination so complete that Mahometan Turkey was the only ally that did not desert the French king, the emperor secured the good offices of Denmark by a treaty, concluded at Spires in 1544, in which the continued payment of the Sound Dues by the merchants of the Low Countries was solemnly stipulated. But as the Danish government some years later proceeded to increase the tariff of duties, with an eye to its own

necessities rather than to those of commerce, the Dutch formed defensive alliances with several of the nations interested in the navigation of the Sound, and war ensued, attended by such unfortunate results for Denmark, that she was forced in 1645 to release Sweden entirely from all further payments, and at the same time, by the treaty of Christianople, to determine definitely the duties to be paid by Dutch vessels. The tariff of duties then agreed upon was explained by another treaty in 1701, and, with this addition, continues at the present day to furnish the basis upon which the collection of the Sound Dues is regulated. The exemption obtained by Sweden lasted for three quarters of a century; but at the conclusion of the last war into which that country was plunged by the wild ambition of Charles XII., this immunity was surrendered as the price of peace, and has never been regained.

France and England found themselves under the same necessity of complying with the demands of Denmark as did their Northern neighbors. Immediately after the conclusion of the treaty of Christianople, France was glad to accept for her commerce the privileges accorded to the Dutch. As early as the close of the fifteenth century, Henry VII. of England recognized the Danish claim to the sovereignty of the Sound. The matter did not fail to attract also the attention of Cromwell, and shortly after the passage of the Navigation Act, which undermined the Dutch and built up the English commerce, he negotiated a treaty for the purpose of securing equal privileges with the Dutch in the payment of the Sound Dues, the chief stipulations of which were renewed under Charles II. A treaty placing France on the same footing with the most favored nations was concluded two years later, and this example was followed by most of the maritime powers.

The basis upon which the Sound Dues were finally established by these various treaties was somewhat peculiar. By the treaty of Christianople, a tariff of specific duties upon certain enumerated articles was adopted, and it was directed that other goods should be taxed according to the ancient usage. It was the intention of those who framed the tariff to make the specific duties equal to an *ad valorem* duty of one per cent, and this principle was in the treaty of 1701 extended

also to the non-enumerated articles. But no provision was made by the contracting parties for those changes of value which time and the progress of commerce inevitably produce, and the result was, that the duty upon many important articles of trade, by gradual decrease of price, was increased to three, four, and even seven per cent, while the duties upon articles not named in the tariff of 1645, though nominally amounting only to one per cent *ad valorem*, frequently exceeded that proportion, being assessed upon a valuation often arbitrary, and fluctuating at the caprice of the official charged with the computation.

No essential change seems to have been made, however, for the space of two centuries. The subject is said to have presented itself for examination at the Congress of Vienna; but in the general re-establishment of the European balance, it escaped without any modification either of system or details. This was undoubtedly in a measure the result of the unfortunate situation to which the war had reduced the kingdom of Denmark. The disasters beginning with the destruction of the fleet and the bombardment of Copenhagen by the English, and ending with the compulsory surrender of the entire kingdom of Norway, had so seriously affected the finances and political strength of Frederic VI., that it is even supposed by some that the Congress guaranteed him the enjoyment of the Sound Dues as an indemnity. If such was the case, the particulars of the arrangement were never made public; but we must add, that the conjecture seems to be corroborated by some expressions contained in a recent document issued by the Danish ministry, to which we shall hereafter have occasion to refer. The paper in question, communicated to the minister resident of the United States in October, 1855, alluding to "the part which these Dues have played in the politics of the North of Europe," deprecates the introduction of secondary questions, "which may do very well in a purely commercial and fiscal arrangement, but not in an arrangement intended to serve as a complement to treaties of peace, and to transactions by which the system of political equilibrium has been regulated." If the treaties and transactions here spoken of occurred during the present century, — a natural

and almost necessary supposition, — they can hardly be other than the arrangements made by the Congress of Vienna.

Finally settled upon this basis, the Sound Dues have proved to be an extremely important branch of the Danish revenue, the entire income of the government from this source having averaged during the last twenty-five years about 2,000,000 rix-dollars, and for the latter part of this period nearly 2,500,000. A small portion of this is made up of the light-money, a tax amounting to two and a quarter specie dollars upon vessels in ballast, and four and a half upon vessels which are laden; and there are also certain other slight incidental charges. By far the greater amount is, however, made up of the Sound Dues proper, — the duty upon merchandise claimed by authority of a supposed prescriptive sovereignty over the Sound. It is this duty alone which is the subject of the present discussion, the United States having consented, as late as 1855, to pay its share of any charges necessary for the maintenance of lights and beacons. The number of vessels annually passing through the Sound, and paying their duties for themselves and their cargoes, varies from fifteen to twenty thousand, sometimes exceeding the latter number. Of these, full one fourth are usually English, and as many Swedish and Norwegian, the number of American vessels being very small, and averaging not much more than a hundred *per annum*. But as our vessels are all obliged to cross the Atlantic, while for the English and Continental vessels a trip up the Baltic is hardly more than a coasting voyage, the American ships are usually of larger capacity than the others, so that the amount paid by us as Sound Dues is much greater than might be supposed from the number of vessels, averaging about \$ 100,000.

We are not aware that the subject of the Sound Dues attracted any particular attention in the United States until the year 1826. On the 26th of April in that year, Mr. Clay, then Secretary of State, concluded at Washington a convention of friendship, commerce, and navigation, which, together with the provisions usually found in such instruments, contains the following clause:—

“V. Neither the vessels of the United States, nor their cargoes,

shall, when they pass the Sound or Belts, pay higher or other duties than those which are or may be paid by the most favored nations."

It was also provided that this convention should remain in force for ten years, and further until the end of one year after either party should give to the other notice of its intention to terminate the same.

The convention thus agreed upon, aside from its value in other respects, secured for the commerce of the United States an important and substantial advantage, since, by the clause quoted above, the amount of the duties to be paid was reduced one fifth, that is, from one and a quarter to one per cent, the former being the nominal rate paid by nations not enjoying special privileges by treaty, and therefore paid up to that time by the United States, and the latter the rate established by the treaties of Christianople and Copenhagen. It does not appear that Mr. Clay, in negotiating this convention, attempted either to deny or to evade the claim of Denmark to the Sound Dues. Avoiding all acknowledgment of their justice, he seems to have acquiesced in their existence by ancient prescription, and to have wisely limited his efforts to securing a practical diminution of the burden upon our commerce. His success in this undertaking was at the time a subject of lively congratulation among those interested, and no change is known to have been sought by our government until the administration of Mr. Tyler.

In the years 1840 and 1841, public attention was drawn anew to the subject of the Sound Dues. The nations in the North of Europe and on the Baltic felt more severely than ever the increased burden upon their commerce, and began to grow restive under the infliction. In addition to the duties themselves, which, as we have already explained, the course of trade and decline in prices were gradually rendering more and more onerous, the collection of the tolls was accompanied by unnecessary delays and vexatious ceremonies, which made the tax still more odious. Vessels bound to or returning from ports in the Baltic were obliged to lower their topsails before the castle of Cronenberg, in token of respect; to stop at Elsinore, and thus become subject to unnecessary port charges; to submit to an examination of their cargoes, and frequently to

encounter a delay, arising from the limited number of hours during which the custom-house was open, which was tedious, and, in those seas, often dangerous. These evils were a serious check upon the growing trade of the Baltic, and accordingly, at the period which we have named, there seems to have been a general movement among the nations most interested for the purpose of obtaining such modification of the regulations of the Sound as would remove the grievances complained of.

In March, 1841, Mr. Webster entered the cabinet as Secretary of State, and the movement to which we allude early attracted his attention, alive as he ever was to all that in any degree concerned the commercial prosperity of the country. On the 24th of May he addressed to the President a paper, asking his consideration of the existing regulations in regard to the Sound Dues and their influence upon our Baltic trade, and advising negotiations with Denmark for the purpose of securing a full participation in the benefit of any new arrangement.

While Mr. Webster was thus engaged in bringing the subject before the American government, England, moved by the loud complaints of her merchants, had entered into a negotiation, which, eleven days after the date of Mr. Webster's communication to the President, was brought to a successful close. As the arrangements then made are almost the only important change which has taken place in the collection of the duties since 1701, they deserve a somewhat particular explanation. The specific duties assessed by the tariff of Christianople were to remain unchanged, but Mr. McGregor (the British consul at Elsinore) and the comptroller of the Danish custom-house at the Oeresund were commissioned to examine and revise the tariff for non-enumerated articles, charged by the treaty of 1701 with a duty of one per cent *ad valorem*, and also to adjust the method of collecting the duties. Now it must be observed, that, while it was undoubtedly the intention of those who framed the tariff of 1645 to enumerate in it the principal articles of trade which passed through the Sound and Belts, still, so great has been the change in commerce, in the requirements of art, and the entire list of wants of civilized life,

that many of the articles which are now most important are not so much as named. This is especially the case with some of the staple articles of American trade in the Baltic, so that the proposition to revise the duties charged upon articles not enumerated in the treaty of Christianople intimately affected the interests of the United States.

The commissioners, adopting the principle of an *ad valorem* duty of one per cent, proceeded, for certain reasons of convenience, to fix a valuation for a long list of articles, and, computing one per cent upon this valuation, established it as a specific duty. As considerable pains were taken to obtain a correct appraisal of the articles taxed, some important reductions were made. For example, the duty on coffee was reduced from twenty-four to six stivers* per hundred-weight, that on many kinds of dye-woods was diminished to less than one fourth its former amount, and that on cotton-yarns to about one half. But that the system, owing to radical defects, still operated unequally in many cases, will be seen by the following statement in regard to the toll upon raw sugar. The duty upon this article was reduced from nine to five stivers per hundred pounds. Complaint was made that even this amounted to about two per cent on the value of common sugar, which led Mr. Webster to inquire into the circumstances, when it appeared, that, Russia having equalized the duty upon all unrefined sugars, only the better kinds of white Havana were sent up the Baltic, so that the commissioners had fixed upon a valuation which nearly doubled the proportion to be paid by low-priced sugars. This would in turn contribute, even in case of a change of the Russian policy, to exclude from the trade all except the high-priced article.

The general result, however, of the labors of the commissioners was favorable, and the satisfaction was increased by the abolition of the rule requiring the lowering of topsails before the Cronenberg, by an important reduction in the port charges at Elsinore, and by the extension of the hours during which the officers were to be in attendance at the custom-

* The Danish stiver is about 2 cents, the rix-bank-dollar 52½ cents, and the specie rix-dollar \$1.05 of our money.

house, all visitation of vessels being dispensed with, and their despatch being generally facilitated. Upon receiving official information of the new tariff and regulations, Mr. Webster expressed great satisfaction with all the arrangements, and the correspondence closed so far as he was concerned. He retired from the Cabinet in May, 1843, and his place was occupied a few weeks later by Mr. Upshur, who opened the subject afresh, upon a new and unusual basis.

Following the example of Mr. Webster, the new Secretary of State addressed to the President a communication giving a general view of our commercial relations with Denmark and the Zoll-Verein. He dwelt at some length upon the subject of the Sound Dues, and declared that the time had come for taking decisive steps towards freeing our commerce entirely from this burden; arguing that, as the tax was founded upon no services rendered to navigation, it could not be demanded with any show of right, and should no longer be submitted to. Whether Mr. Upshur took any further steps in the matter does not clearly appear. No correspondence has been published, and the Danish official journal, in March, 1844, stated that nothing had passed between the two governments in regard to this subject since the negotiations under Mr. Webster. But Mr. Irwin, the representative of the United States at Copenhagen, in a despatch dated February 10, 1844, remarks that Mr. Upshur's "observations with regard to the Sound Dues, and the treaties with the Northern powers, have given rise to much comment and speculation on the part of his diplomatic colleagues," and refers to a possible refusal on the part of this country to submit to the Sound tolls any longer. The "observations" here alluded to, which may have been no more than the letter to the President before spoken of, seem in fact to have occasioned no little excitement, both in Denmark and in the North of Europe generally. Reports were widely circulated that the American government contemplated a peremptory refusal of any further payments, and that a formidable squadron was to be fitted out to act as convoy to vessels passing through the Sound; and these rumors gained so much credit, that it was thought necessary to publish a formal contradiction of them in the ministerial journal

at Copenhagen. The unfortunate disaster on board the Princeton, by which Mr. Upshur lost his life, enabled those who had given currency to these stories to retreat gracefully, and furnish an explanation for the continuance of peace.

Mr. Calhoun, who succeeded to the post of Secretary of State upon Mr. Upshur's death, seems to have attempted nothing beyond the collection of information. But it had happened, meanwhile, that the Prussian government, regarding the Sound Dues as unfavorably as the United States, had commenced negotiations, to aid the prosecution of which the king of Prussia, in the course of the year 1845, visited in person the Danish court. These efforts were so far successful, that in the following spring a proclamation appeared, reducing the dues upon raw cotton from eighteen to ten stivers per hundred pounds, on spirits from four to three stivers per barrel, and on sugar from five to four stivers on the hundred pounds. The advantages gained to our Russian trade by this change, however, do not seem to have been as great as was anticipated. The imports of cotton into Russia up to the beginning of the late war had seldom greatly exceeded 10,000,000 pounds, and had sometimes fallen nearly to 4,000,000. Russia continued to import yarns and twist from England largely, although it must be observed that the gradual increase of her own manufactures considerably diminished her wants in this respect. It is hardly necessary to remark, that England has thus generally found the Sound Dues advantageous to her manufacturing interests, while Russia has equally strong reasons for opposing them, which family alliance and sympathy alone can overcome. As the case now stands, Russia refuses admission into her ports to any vessel which does not produce evidence of having discharged the Dues at Elsinore. Prussia, with less reason for acquiescence, and feeling severely the check upon her trade, has been anxious to use every opportunity for relieving herself.

In March, 1848, disturbances commenced in the duchies of Schleswig and Holstein, followed by an obstinate struggle between Prussia and Denmark, which diminished the revenue and crippled the resources of the latter so far as to embarrass the action of all departments of her government. As it ap-

peared likely that, in arranging the terms of peace, the German negotiators might insist upon the entire abolition of the Sound Dues, Mr. Flenniken, the Chargé of the United States at Copenhagen, represented the case to Mr. Buchanan, then Secretary of State, who in return transmitted instructions to which more recent events give an unusual degree of interest. Agreeing with Mr. Flenniken that the time was favorable for opening negotiations, Mr. Buchanan entered into an elaborate argument to show the injustice of the Danish claim, dwelling at some length upon the superior advantages derived by Denmark from the reciprocity of trade, and urging that the abolition of the Sound Dues would be no more than a fair equivalent for these advantages. He instructed Mr. Flenniken to negotiate for a new treaty of commerce, providing also for exemption from toll, the exemption to be perpetual if possible, and then authorized him to make the following somewhat singular offer. As there would be considerable delay in procuring an act of Congress giving notice for the termination of the existing convention, and as the instrument provided for twelve months' delay after notice should be given, while a new treaty going into effect immediately would thus cut off the Sound Dues certainly two years sooner than could be done otherwise, Mr. Flenniken was to offer to the Danish government \$250,000 as an indemnity for the amount thus lost to the royal exchequer, in return for which liberality the exemption provided by the new treaty was to be perpetual.

In compliance with these instructions, Mr. Flenniken proceeded, on the 20th of November, 1848, to open a discussion with the Danish Minister for Foreign Affairs, informing that officer at the outset, that, unless there were a reasonable prospect of extinguishing the dues by treaty, Congress would proceed to terminate the existing convention, and that for this purpose he must have a reliable answer on or before the 15th of the following month. This overture, which at least had the merit of decision and vigor, he followed up by a statement in writing, embracing most of the points developed in Mr. Buchanan's instructions. But as the Danish Minister objected to negotiating until the questions between his country and Germany should be arranged, Mr. Flenniken agreed to postpone

the subject until the following year, and then,—we quote from his despatch,—

“To convince him of the generous and liberal disposition of the United States towards Denmark, I informed him that, in addition to my written proposition, I would stipulate on the part of my government for the payment of \$250,000, not for the purchase of a *right* enjoyed by Denmark, but as an *equitable equivalent* for that branch of her revenue which she would thus give up, and mainly to furnish a liberal precedent on the part of a government who was strictly under no obligations to pay, in order that Denmark might be enabled profitably to settle with European nations, who were in fact under obligations to submit.”

This proposition was received with great satisfaction by the Minister, Count Maltke, who undoubtedly regarded it as a thinly disguised offer to purchase the extinguishment of the dues, and Mr. Flenniken was assured that the king would be urged to accept it. Nothing further seems to have been done. The resumption of hostilities with Germany broke off the negotiations, and the matter rested, until it was again brought forward by the present administration.

Mr. Marcy, as early as July 18, 1853, instructed Mr. Bedinger, the new Chargé at Copenhagen, to press the subject as soon as possible to a conclusion, and, giving an accurate account of the history of the Sound Dues, took the broad ground that the United States “can recognize no immemorial usage as obligatory, when it conflicts with natural privileges and international law.” Subsequently also, in reply to an inquiry from Mr. Bedinger, the Secretary wrote that the President declined authorizing him “to offer to that power any compensation for the removal of that as a favor which we have demanded as a right.” The interviews which, in pursuance of these instructions, Mr. Bedinger had with the Minister of Foreign Affairs, did not result in any practical measures. Some delay was occasioned by the pending crisis in European politics, and also, in Mr. Bedinger’s opinion, by the sinister influence of Russia; and the Danish authorities solicited the postponement of the discussion until tranquillity should be restored to the political world, assuring the American representative that, as soon as possible, an effort would be made to enter into arrangements with all the powers interested to abandon

the Sound tolls upon receiving *a certain compensation*,—a settlement of the question which Mr. Bedinger replied could not be made by the United States. This intimation of an intended proposition for the adjustment of the question was given in March, 1854, and nothing more seems to have been done in any quarter until the President, in his annual message, December 4, 1854, recommended to Congress that notice should be given for terminating the convention of 1826. The Danish Chargé at Washington immediately received instructions from home to present to the government of the United States a statement of what was deemed the true nature of the right claimed by Denmark. The document in which this was done relied mainly upon the argument drawn from established custom, and presented that view of the question with no little force and ingenuity. The whole argument of the Danish statement was concisely expressed in the following words:—

“His Majesty’s government holds that the right of Denmark to the Sound Dues is a right existing under the law of nations, by immemorial prescription, and therefore independent of all treaties.”

Hence, it was argued, the abrogation of the convention would not restore anything to the United States, nor take anything from Denmark, while, it was added, the exemption claimed by this country could not be conceded without affording our commerce an undue advantage, which other nations would immediately demand to share, and our claim was therefore equivalent to a demand for the entire abolition of the Sound Dues.

Nevertheless, the Senate proceeded to pass a resolution for giving notice of the termination of the treaty, and after a final interview, in which the Danish Minister steadily refused to listen to any proposition for abandoning the Sound Dues without some equivalent, and Mr. Bedinger as steadily refused, in compliance with his instructions, to offer “any bribe for that which was clearly our right,” the notice was at last given, April 14, 1855, that after the expiration of one year the convention of April 26, 1826, would be at an end.

In regard to this measure, which is the chief result attained

by the negotiations for the remission of the Dues, several questions arise. First in order comes the inquiry, Was this abrogation of the treaty, by a resolution of the Senate, instead of an act of Congress, constitutional? This question was raised in the Senate by Mr. Sumner, and was referred to a select committee, who reported favorably to the view already taken by the Senate. It was considered, that, as the treaty provided for its own termination, and was created by the will of the President and Senate, it implied an authority by which that will might be revoked, and that this revocation must necessarily proceed from the body exercising the will. As to treaties not containing any provision for termination by the act of either party, the committee made no inquiry, regarding the presence of such a stipulation as an essential condition. It must be observed that only one case similar to the present has ever occurred in our history, and in that,—the case of the treaty with England concerning the joint occupation of Oregon,—the action of both houses of Congress was deemed necessary in order to break off the treaty. And not only was this the sole precedent, but the opinions of the courts and of individuals, frequently expressed, had almost uniformly been, that, while the President and Senate might make a treaty, Congress alone could abrogate it. As to that clause of the Constitution which declares “all treaties made under the authority of the United States” to be “the supreme law of the land,” and hence, by natural and almost necessary inference, repealable only by the legislative power, the committee contented themselves with a denial of its application, and evaded the direct argument. They also contended that

“The President and Senate could certainly terminate this treaty, or any other, with the consent of the opposite contracting party, by the negotiation of a new treaty, in terms annulling it. And what is the present case but such consent, providing in advance for its termination on a contingency, and without negotiations?”

But, it must be replied, the consent here spoken of is a mere stipulation as to the mode of procedure in abrogating the treaty, and not by any means a consent to the abrogation

itself, like that implied in the adoption of a new treaty; and while the Constitution may give to the President and Senate a right to *supersede* a treaty, in such a manner as insures the continuance of friendly relations, it can hardly be argued that therefore it is intended to give them power to *break off* all treaty connections, — a step which in most cases would be deemed preliminary to hostilities. On the contrary, (most of the reasoning upon this question being general and inferential,) this power might be very properly sought for in the charge of that body which possesses the war-making power, that is, of Congress.

The question was practically settled for the present by a vote of the Senate, declaring its previous action to be proper and sufficient; but the legal question as to the limits of executive power in such cases is interesting, and can hardly be said to have received a satisfactory solution. We must add, however, that, as regards the treaty with Denmark, the question is merely a matter of domestic concern, and does not affect the validity of the notice given to that power.

But besides this constitutional question, a grave inquiry presents itself, whether the abrogation of the treaty was a judicious measure. It cannot be pretended that this step was necessary in order to place our government in a position to claim and negotiate for the complete remission of the Dues; for it was not admitted on either side that the convention of 1826 implied any obligation to continue the payment, or indeed had any effect at all upon the general question as regards this country. The convention merely regulated the payment while it should continue, the United States contending that the question as to the right of Denmark to the tolls was held in abeyance, Denmark claiming that her right existed prior to any treaty, and both denying that any new obligation was incurred by this country in 1826. The abrogation of the convention can, then, be construed only as a preliminary step towards a refusal to pay the tolls; and we must now inquire whether the time had arrived for such a measure.

It is of course understood that Denmark could not grant an immunity to ships sailing under one flag and deny it to

others. On the contrary, a concession of free passage to one nation would be a virtual surrender of the entire sovereignty claimed by her over the Sound. If, then, our vessels should attempt to enter the Baltic without paying the dues, it is certain that Denmark would enforce payment, and that hostilities would be the natural consequence of such an attempt. It is then fair to expect, that such measures for throwing off the imposition would be resorted to only in the last extremity, if at all; only after diplomacy had failed, conciliatory offers had been rejected, and all efforts to obtain a peaceful settlement of the question had proved unavailing. Now it appears that when Mr. Bedinger first opened negotiations under the present administration in December, 1853, nearly five years had elapsed since the last previous communication upon the subject had taken place. Mr. Bedinger had three interviews with the Danish Minister for Foreign Affairs, the last in March, 1854, when it appeared that the Danish government had certain propositions to offer as soon as there was an opportunity for a general arrangement, to which the Minister said "he had strong reasons for believing that we would assent." The time was certainly unpropitious for negotiation, and, even with the utmost alacrity on the part of Denmark, it is difficult to see how she could then have taken steps for adjusting a question of European interest. With a serious quarrel between the Diet and the Ministry, threatening a political if not an armed revolution, and paralyzing her energies, her finances exhausted by the recent struggle with Germany, — with a near prospect of a general European war in which she might be compelled to take an active part, the two nations most deeply interested in the question of the Sound Dues then actually engaged in hostilities, and each eager to thwart any arrangement beneficial to the commerce of the other, — it is not surprising that Denmark was reluctant to enter upon the discussion of this important subject, and not surprising that she should ask to have the matter deferred. And as our government had been willing to allow the question to slumber for five years, it was to be expected, that, under such circumstances, it would not hastily proceed to extremities.

These considerations, however, appear to have had no

weight at Washington. No further communication was held with the Danish government, and if any took place with the Danish Chargé in this country, it has not appeared in the published documents. Mr. Bedinger called the attention of the Secretary of State to the subject, but received no answer. Nothing more was heard of the matter until the President's recommendation, in December, 1854, to break off the existing convention. We believe that no argument is required to show that such a step as this was unwise and premature. Considering that for five years the question had been suffered to rest; that negotiations were finally opened at a time when it was manifestly impossible for Denmark to act promptly, and hardly honorable to ask her to act at all; that then negotiations were opened upon a basis notoriously impracticable, without any effort or apparent desire to learn upon what terms a settlement could be made; that they were abruptly closed four months later; and that, after eight months' silence, a measure was resorted to which was avowedly designed to settle the dispute in the most offensive manner, and in the way most likely to lead to interruption of peaceful relations, — we may fairly say that a policy was pursued such as would hardly have been adopted with an opponent of more formidable military or naval strength. If such duties had been levied for centuries at Tangier or Gibraltar, and constituted as important a part of the revenues of Great Britain as the Sound tolls do of the income of Denmark, we should hardly call so peremptorily upon England to abandon the whole, and, without seeking for any middle ground of agreement, proceed to resist all further payments, after an acquiescence of three quarters of a century.

Forced to act amid these unfavorable circumstances, the Danish government drew up a plan for a general congress of the powers interested, to meet at Copenhagen as early as possible. This document, communicated to our government early in October, 1855, after explaining the position in which Denmark found herself, and the necessity for action occasioned by the course of the United States, and premising that a mere revision of the tariff of Sound Dues would not satisfy the positive demands of this country, suggested the project of

capitalization, and proposed that the quota to be paid by each nation should be ascertained by the quantity of merchandise passing through the Sound and Belts, as far as the Sound Dues proper were concerned, and by the number of vessels of each flag as regarded the light-money and similar duties. It was of course indispensable that this arrangement should be concurred in simultaneously by all the powers interested.

“Besides this condition, there is yet another which the Danish government regards as essential: it is, that the affair in question should be treated, not as a commercial or money transaction, but as a political matter. This would correspond with the history of the Sound Dues, with the part which these dues have played in the politics of the North of Europe; otherwise it were impossible to give to the negotiation the necessary scope and character, in order that it may not be encumbered by questions of a secondary class, which may do very well in a purely commercial and fiscal arrangement, but not in an arrangement intended to serve as a complement to treaties of peace, and to transactions by which the system of political equilibrium has been regulated.”

The condition thus introduced into the Danish project was alone sufficient to insure its rejection by the United States; and in his reply, dated November 3, 1855, Mr. Marcy very justly remarked:—

“Of the utility or wisdom of the political theory of the balance of power, in its application to the European family of nations, it is not proposed to express an opinion; but enough of its operations has been seen to impress upon this government a fixed determination to avoid being brought within its vortex. It has long been the cherished policy of this government to avoid such a dangerous complicity, and the President will not yield in any case to the slightest relaxation of it.”

But prudent and judicious as was the course of our government in this respect, there are views set forth in its answer to the Danish proposal which seem to be of more doubtful propriety. It is objected by the Secretary, that the proposed congress was not authorized to pass upon the question as to the original rights of Denmark. But this objection is scarcely a reasonable one; for if Denmark had proposed to submit that question to a tribunal interested in the defeat of her claim, she might have saved herself the trouble of a formal

congress. The offer to arrange a plan, with the concurrence of the other powers, for the extinguishment of the Dues, without material detriment to her own prosperity, was as much as could reasonably be expected, and was certainly as much as we ourselves, in such a situation, should have offered. But the grand objection to the proposed congress undoubtedly arose from the fixed determination to consent to nothing short of a complete surrender of the tolls,—a position already laid down, as we have seen, in the most explicit terms, and now repeated in the remark that Denmark must expect no proposition to be “favorably entertained, if it should include, either expressly or impliedly, any compensation for the surrender of her pretended right to control the free use by our ships of the Sound and the Belts of the Baltic.”

We have already shown that the right to levy dues in the Sound is held to exist by immemorial prescription, rather than by any specific principle of the law of nations. Denmark rests her claim upon that ancient and continued possession, which, by the municipal law of all countries, is held to confer a right of property, and not upon any express grant or general principle. This claim has been admitted for centuries by all the maritime powers of Europe, and acquiesced in by our own government for nearly the whole period of our national existence. The essential principle upon which it rests is one which could not by any possibility be adduced in support of a claim of recent origin, so that the parallel drawn between the Sound Dues and the tribute exacted by the Barbary powers, and the assertion that, if the Danish claim were admitted, similar demands might be made at the Straits of Gibraltar, or of Messina, or at the Dardanelles, are alike unfounded and preposterous. In each of these cases there would be wanting the fundamental idea of prescription, upon which alone Denmark founds her claim to the Sound Dues proper.

It is clear, then, that no precedent could be established in this case which would bind us to submit to the unfounded demands of any power in the future, and we may inquire whether, with reference to this single case alone, the policy of our government has been the most judicious that could be

adopted. So far as the question concerns our interest, the quota which this country would furnish for capitalizing the Sound Dues would not defray the charges of the smallest squadron which we should send to the Baltic as convoy, leaving out of view the possibility of a long naval contest. As to the point of honor, — the only other motive which can have influenced our course, — it is generally found that no individual is eager to distinguish himself above his fellows in the defence of his personal reputation, unless he is conscious that it requires more than ordinary support, and is peculiarly liable to be called in question. A settlement of this disputed claim which should be satisfactory to the European powers, whose pecuniary share in it is tenfold greater than our own, — powers as jealous in defence of their rights and as watchful over their interests as ourselves, whose naval force could by a single blow strike Denmark from her place among the independent nations of the Continent, — would not be unworthy of our acceptance. And it is also to be considered whether our national reputation would be most advanced by an over-scrupulous attention to our own rights, or by a generous deference to the situation and feelings of others. The claim preferred by Denmark is one which she has been encouraged to make by the world and by ourselves, and the position of this country, its wealth and its power, place it so far above all suspicion of timidity or constraint, that we can well afford to judge that claim with a liberal spirit of equity, rather than by a rigid and exacting estimate of our legal obligations. Without admitting any necessity which compels such a course, we can honorably concede something to the demands of a weaker nation, — demands not recent or of any ordinary nature. Without denying the justice of our own views, we can gracefully yield to the opinions of others, so far as to accept a middle ground of conciliation and harmony.

Notwithstanding the refusal of the United States, a congress assembled at Copenhagen, during the last winter, in which England, France, Russia, Sweden, Prussia, Austria, the Netherlands, Spain, Belgium, and Denmark were represented, and after consultation the Danish delegates made the following proposition. Setting the annual income of the Sound

Dues at 1,750,000 rix-dollars, — a considerable sacrifice, since, as we have seen, the average product of the tolls is over 2,000,000, — twenty years' purchase would give a capital of 35,000,000. This amount, which was to include all dues on ships as well as cargoes, was to be apportioned according to the merchandise imported and exported, Denmark paying her share with the others, and the arrangement was to be agreed to by all the powers represented, before it should become obligatory. Upon this basis the proportion to be paid by England would be more than 10,000,000 rix-dollars, nearly one third of the whole, that of Russia nearly as much, while the United States would be called upon for 2,100,000 or \$ 1,050,000. While these negotiations were pending, the year's notice prescribed by the convention of 1826 came to an end, but our government agreed with the Danish to continue the operation of the treaty for two months longer. We believe that no official announcement has been made of the course finally adopted at the expiration of the treaty in June last, but it is understood that the question has been bequeathed to the next administration.

Sweden and Russia immediately gave in their adherence to the Danish proposition, and other powers are understood to be ready to take a similar step, if there should be a prospect of its general adoption. But the disposition of the British government to oppose the scheme of capitalization, for a time destroyed the hope of a speedy adjustment. Lord Palmerston's cabinet, contrary to the opinions of the press, and, it is believed, of the country, is said to have objected to the plan for entirely extinguishing the Sound Dues, and is understood to have submitted a proposition, intended to perpetuate the exactions, by simply providing that they shall be collected at the ports of entry and of departure in the Baltic, instead of Elsinore. But more recent advices give us reason to hope that this objection has been withdrawn, and that England has been induced to accede to the scheme of capitalization, while at the same time it is said that France, also following the lead of her great ally, is about to signify her compliance with the proposed arrangements. Certain it is, that, — leaving out of view all desire to check the commerce of Russia by imposing

indirectly import and export duties, and passing by all fears of diminishing the British exports to the Baltic by opening the trade fairly to the producers of raw material as well as to manufacturers, — no British statesman should be unmindful of the necessity of a speedy settlement of this question, not only to the true commercial interests of his own country, but to the peace of Europe, to which the continuance of the Sound Dues now offers a perpetual menace.

The United States are, then, the only important power whose consent to the Danish scheme has not been given; and taking into consideration therefore our independent position, — free as we are from all the complicities of European politics, — our unquestioned ability to enforce our will in a contest with Denmark alone, our ample means to pay the small sum required to free our commerce from these restrictions, without its being felt in the slightest degree by our national finances, the great importance of this concession to Denmark, and the fact that it can never by any possibility be distorted into a precedent, because no similar case can ever arise, we believe that the honor, dignity, and interest of this country will be far better sustained by yielding with an easy grace to this demand, than by the most successful war which might grow out of a determined adherence to an abstract principle.

And finally, it must be borne in mind that all our efforts to sustain our rights by assuming a belligerent attitude may easily be rendered nugatory by those Northern powers who have acceded to the Danish proposals, and whose interest impels them to seek the accession of all the nations concerned. We have already referred to the refusal of Russia to open her ports to vessels which have not paid the Dues at Elsinore. In the event of our refusal to unite in the compromise, that nation has only to extend this policy to vessels not released from payment by treaty, and our Baltic trade is cut off, without hope of redress or opportunity for complaint. The Northern powers may well refuse to receive into their ports vessels which have evaded or refused the payment of duties to which they willingly subject their own navigation; nor can we expect them, by giving a preference to our ships over theirs, voluntarily to place in our hands the carrying trade to and from their own ports.

From all these considerations, then, we believe that it is clearly the most certain, the most manly, and the simplest way of closing the affair on our part, to join with other nations in the amicable settlement of this question, and, by an inconsiderable sacrifice, to free our commerce for ever from this imposition, and from all danger of interference by the great Northern powers.

ART. IV. — *Provinces d'Origine Roumaine. Valachie, Moldavie, Bukovine, Transylvanie, Bessarabie.* Par M. A. UBI-CINI. Paris: Firmin Didot Frères. 1856. 8vo. pp. 226.

IN that dullest quarter of Modern Rome which lies in the hollow between the Capitol and the Quirinal hills, where the stately gloom of the Torlonia and Valentini palaces throws a superfluous quiet upon chapels from which the beauty has faded and shops from which the trade has departed, stands a monument of ancient Rome which keeps a fresher and more youthful grace than shop or chapel or palace. Of all the remains of the Pagan Empire, none binds so well the Present with the Past, none restores so fully the customs and the glories of the realm of the Cæsars. The loungers of the city — not a small class — love to come after their morning “collazione” of crust and coffee, and decipher by the eastern sunlight the stirring narrative wreathed in marble around that slender shaft, — how Trajan bridged the great Northern river, and received the barbarian ambassadors, and vanquished with his steady legions their ferocious bands, and added that vast wild region to the Roman dominion. The greatest of modern conquerors, seeking to perpetuate a memorial of his victories, could find no better model than this Roman pillar. The column of the Place Vendome, the ornament of Paris, is only an imitation of the column which has remained almost unmutilated for seventeen centuries in the Forum of Trajan.

It is rumored that the present French Emperor intends to commemorate by another similar monument the victories of the late war in the East; — victories, some of them, gained in